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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2006

No. 2622-li/1(B)-94/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th February 2006 in Industrial Dispute Case No. 97/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Sr. Manager, Project, Central Institute of Plastic Engineering & Technology, B-25, Chandaka Industrial Estate and its Workman Shri Jatin Kumar Parida, C/o Shri G.B. Pattnaik, Qr. No. VIR-8, Unit-6, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 97 OF 1995

Dated the 28th February 2006

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Senior Manager, Project .. First Party—Management
Central Institute of Plastic Engineering &
Technology, B-25, Chandaka
Industrial Estate, Bhubaneswar.

And

Shri Jatin Kumar Parida .. Second Party—Workman
C/o Shri G.B. Pattnaik
Qr. No. VIR-8, Unit-6
Bhubaneswar.

Appearances :

For the First Party–Management . . . Shri Nalini Kant Mohany
Advocate

For Second Party–Workman . . . Shri S.B. Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 5979(5)-L. E., dated the 18th May 1995 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :

“Whether the termination of service of Shri Jatin Kumar Parida, Messenger-*cum*-Watchman-*cum*-Cook by the management of Central Institute of Plastic Engineering and Technology, Chandrasekharpur, Bhubaneswar with effect from the 1st January 1990 is legal and/or justified ? If not, to what relief Shri Panda is entitled ?”

3. By way of this reference workman, Jatin Kumar Parida, Messenger-*cum*-Watchman-*cum*-Cook has challenged the legality and justifiability of the action of the management of Central Institute of Plastic Engineering and Technology, Chandrasekharpur, Bhubaneswar (in short the management) in terminating his services with effect from the 1st January 1990.

Matrix of the necessary facts as bear on the controversy involved in the present reference is that the workman was appointed as Cook-*cum*-Watchman-*cum*-Helper by the management with effect from the 15th December 1986 for a period of three months which period was extended from time to time with short breaks till the 31st December 1989. According to the workman, he had rendered continuous uninterrupted service since the date of his joining till the 31st December 1989 with much sincerity, devotion and to the utmost satisfaction of the authorities but the management all on a sudden without any rhyme or reason terminated his service with effect from the 1st January 1990 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). All his efforts for re-engagement when bore no fruit he approached the labour machinery by raising an industrial dispute but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with back wages alongwith other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the workman had never worked for more than 240 days continuously as a regular employee in a year in terms of

the statutory provisions of the Act and therefore, with regard to his termination the provisions of Section 25-F of the Act were not attracted and the workman is not entitled for any relief. According to the management, the workman voluntarily abandoned the service with effect from the 19th August 1989 and all his dues were paid to him for the days he had actually worked. Since the workman had voluntarily abandoned the job and when he was paid all his dues, he is not entitled for reinstatement in service with back wages. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

“(i) Whether the termination of service of the second party workman with effect from the 1st January 1990 is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?”.

6. The workman in support of his case has examined himself as W.W. 1 and has relied upon by the voluminous xerox copies of the documents marked as Exts. 1 to 21 respectively. On the other hand, the management has examined one Ajit Kumar Patnaik and A. Kupeswamy as M.Ws. 1 and 2 and has relied upon the series of xerox copies of the documents marked as Exts. A to J respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The workman in his evidence has stated that on the 24th December 1986 he was appointed as Cook-Watchman-Helper for three months vide Ext. 3 under the management of CIPET, Madras having its branch office at Bhubaneswar which period was extended from time to time vide Exts. 3 to 17 and the last appointment order was given to him on the 4th October 1988 vide Ext. 18. He admits in his evidence that during the period of appointment he was issued with the termination order after expiry of three months as per the terms and conditions stipulated in each appointment order and there was gap of 1 to 3 days in between termination and appointment. He has categorically stated that on the 19th August 1989 he voluntarily abandoned the service. While in service he had been to his native place to see his ailing mother. Prior to that he had requested the Manager to give an advance of Rs. 200 and the Manager gave the above advance after obtaining his signature and the signature of his brother-in-law in a blank paper. On return he reported for duty but he was not given any work. On his request, in the month of November, 1989 he was given the work of a Helper of the Cook. Although he was receiving his wages in the salary register previously but from November 1989 he was paid his wages in the voucher vide Exts. 1 and 2. From the 1st January 1990 he was not given any work. It is in his evidence that before refusing employment he was not given any notice or notice pay and retrenchment compensation. Neither any charge was framed nor any enquiry was conducted against him for any misconduct by the management. He admits

in his cross-examination that the CIPET was in a project stage till March, 1991 and that he had received all his claims from the management till the 19th August 1989. He further admits in his cross-examination that on the 6th November 1989 he was engaged as a casual labourer on daily wage basis till the 31st December 1989. It has been suggested to him that he had tendered his resignation vide Ext. 19 and that he voluntarily abandoned the job and that he had not completed 240 days of service in a year preceding the date of termination and that he is not entitled to be reinstated in service with back wages to which he has categorically denied. On the other hand, the management through M.W. 1 has established that the office of the management was registered under the Societies Act and is governed under the rules and regulations and Memorandum of Association vide Exts. B and C. It was also fully owned by the Central Government. The main aim and object of the management was to impart education to the students. There is no manufacturing unit in the management and the management is neither a commercial nor profit making unit. It is also in his (M.W. 1) evidence that the workman was appointed on *ad hoc* basis with short breaks and he had worked till the 19th August 1989. He was paid his wages up to August, 1989 vide Exts. H and H/1. On the 3rd October 1989 he submitted a letter expressing his intention not to work under the management vide Ext. 19. Subsequently on his approach he was engaged on daily wage basis at the rate of Rs. 10 per day from the 6th November 1989 till the 31st December 1989 and was also paid his wages till that date. From the 1st January 1990 he had not turned up for joining his duties. He (M.W. 1) has categorically stated that the workman had not submitted any representation after the 1st January 1990 for his engagement in the establishment of the management. It is also in his evidence that the appointment of the workman was not given against any permanent vacancy. Since the workman had voluntarily abandoned the service and when he was paid all his wages for the period he had worked he is not entitled to be reinstated in service with back wages. During cross-examination he has admitted that by the time the workman was engaged by the management he was not in service under the management. He further admits that his evidence in the present case is based exclusively on the official records and he has no personal knowledge about the case. It has been suggested to him that just to regularise the services of one Sarat Rout the workman was refused employment on the plea of voluntary abandonment to which he has negatively replied. M.W. 2 A. Kupeswamy in his evidence has stated that he joined in the establishment of the management on the 1st February 1989 and by the time he joined at Bhubaneswar the workman was already working in the establishment of the management as Helper. The appointment of the workman was on *ad hoc* basis and he had worked up to the 19th August 1989. Thereafter the workman did not turn up for joining his duties. He was paid his wages for the days he had actually worked. M.W. 2 in his evidence has further stated that on the 3rd October 1989 the workman had given in writing that he was no more interested to work in the establishment of the management vide his resignation letter Ext. 19. On the request of his father the workman was further engaged on daily wage basis from the 6th November 1989 till the 31st December 1989. Thereafter the workman did not turn up for joining his duty and all the dues were paid to him. Nothing material and substantial has been elicited by the workman to discard his evidence. On perusal of his evidence I also filed no cogent reason to disbelieve his evidence.

8. Both the management and the workman have adduced evidence both oral and documentary in support of their respective cases. The perusal of the evidence of the workman clearly emerges that he voluntarily abandoned the job on the 19th August 1989 and received

all his dues from the management till that date. Subsequently on his request he was given engagement on the 6th November 1989 on daily wage basis and he worked till the 31st December 1989. He was also paid his wages for the days he had worked. The workman has clearly admitted in his evidence that he was appointed on *ad hoc* basis for three months which period was extended from time to time with short breaks. During the period of appointment he was issued with termination order after expiry of three months as stipulated in the appointment letter and there was gap of 1 to 3 days in between the termination and appointment. The above evidence given by the workman gets ample considerable corroboration from the evidence of M.Ws. 1 and 2. From the above evidence it is crystal clear that he was appointed on *ad hoc* basis for certain months which period was extended from time to time and after expiry of the stipulated period he was terminated from service on every occasion and subsequently he was given further appointment and in between the termination and appointment there was gap of 1 to 3 days. The evidence given by the workman in this respect and the documents already relied upon by him vide Exts. 3 to 18 clearly show that he was not working continuously under the management and had not completed 240 days of service in terms of the statutory provisions of the Act. The legal position is crystalised that under Section 25-F of the Act, if a workman has worked for more than 240 days in earlier years, or anyone of the earlier years, he would be deemed to be in continuous service. But in the instant case the workman was not in continuous service during the period of one year or in the year preceding the date of termination. In view thereof, there was no question of breach of Section 25-F of the Act. He would therefore not be entitled to any benefits under Section 25-F of the Act. In that view of the matter, the workman is not entitled for any relief. Apart from the above fact he clearly admits that he had voluntarily abandoned his service with effect from the 19th August 1989 and received all his dues from the management. Subsequently on the 3rd October 1989 he submitted a letter to the management vide Ext. 19 stating therein that he had voluntarily abandoned the service since the 19th August 1989 and he had nothing to do with the CIPET and that he had received all his dues from the CIPET, Bhubaneswar. The above said document being coupled with oral evidence leaves no room to entertain doubt about voluntary abandonment of service by the workman. On the other hand, the management has taken a stand before this Court that the workman had never worked for more than 240 days as a regular employee, therefore, with regard to the termination of the workman the provisions of retrenchment are not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act, therefore, the workman is not entitled for any relief. The further stand taken by the management is that it had never terminated the services of the workman rather he voluntarily abandoned the service with effect from the 19th August 1989 and in this respect he was paid all his wages. Subsequently the workman was engaged on the 6th November 1989 and worked till the 31st December 1989 on daily wages basis and he was also paid his wages for the days he had worked under the management. The above such fact has nowhere been challenged and disputed by the workman during evidence. Rather the workman has clearly admitted in his evidence that he had voluntarily abandoned the job with effect from 19th August 1989 and received all his dues from the management till that date. In view of the clear admission of the workman, I find considerable force in the stand taken by the management. The management has relied upon voluminous documents but in view of the clear admission of the workman, the documents already relied upon by the management need no discussion at all. After carefully examining the evidence

adduced from both the sides, I am of the considered view that the workman has not succeeded in proving his case with regard to his termination from service by the management with effect from the 1st January 1990. In such premises the workman is not entitled to get any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
28-2-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
28-2-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government

LOG BOOK